

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

In re	)	CASE NO. 97-03746
	)	(Chapter 11)
UPLAND PARTNERS, a Hawaii	)	
limited partnership,	)	
	)	Re: Docket Nos. 2462, 2465, 2459,
Debtor.	)	2690, 2691, and 2709
	)	
	)	
	)	

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**AMENDED MEMORANDUM DECISION ON  
P.F. THREE PARTNERS' MOTION FOR  
RECONSIDERATION OF CLAIM NOS. 52, 53, AND 55**

On June 10, 2003, Trustee Richard Emery (the "Trustee") filed Objections to Claims Nos. 52, 53, and 55. Following an evidentiary hearing, the court entered findings of fact, conclusions of law, and an order on December 10, 2003, pursuant to which the court (1) ruled that Claim Nos. 52 and 53 were valid unsecured claims but were not entitled to administrative priority under section 11 U.S.C. § 503, (2) reserved ruling on the issue of whether post-petition interest should be awarded on the claims, and (3) disallowed Claim No. 55 in its entirety.

On December 22, 2003, P.F. Three Partners filed its Motion For Reconsideration Of Findings Of Fact And Conclusions Of Law Regarding Objections To Claims Nos. 52, 53, and 55 And Order Regarding Objections To Claims Nos. 52, 53, and 55 ("Motion For Reconsideration"). P.F. Three Partners

requested that the court to hold a further hearing to consider additional rebuttal evidence.

On January 13, 2004, the court ordered P.F. Three Partners to file all testimony (in the form of written declarations) and exhibits that it would offer at a further hearing and provided the Trustee and any other party in interest an opportunity to respond. P.F. Three Partners has filed declarations and exhibits, and the Trustee has filed a response.

Claim Nos. 52 and 53

Claim Nos. 52 and 53 allege that Lei-Anne Ellis and the Neuhaus Family Trust lent money to Upland Partners while it was a debtor in possession to enable the Debtor to acquire water meters serving its property. William S. Ellis, Jr., was the designated responsible individual of the debtor in possession and is a relative of Ms. Ellis and the Neuhaus family. P.F. Three Partners, the assignee of the claims (and an entity which is closely associated with Mr. Ellis), argues that the court erred by denying administrative priority to Claim Nos. 52 and 53 because they are on their face post-petition claims that require administrative claim treatment.

The court held that Claim Nos. 52 and 53 were not entitled to administrative priority because the Debtor did not incur the debt in the ordinary course of business and did not obtain the court's approval of the loans. P.F. Three

Partners merely restates its position that it borrowed the money in the ordinary course of business. P.F. Three Partners has not offered any evidence that persuades the court to reconsider its prior determination.

Claim No. 55

Claim No. 55 alleges that, while Upland Partners was a debtor in possession, Mr. Ellis caused the Debtor to borrow money from P.F. Three Partners, Shelso, Ltd., Mr. Ellis, Lei-Anne Ellis, and Kula-Olinda Associates (“KOA”), all of whom assigned their claims to P.F. Three Partners. The court previously disallowed Claim No. 55 in its entirety because P.F. Three Partners failed to prove that the indebtedness was valid.

Claim No. 55 has three components:

P.F. Three Partners' direct payments for the Debtor's benefit	\$ 7,469.61
KOA's direct payments for the Debtor's expenses	12,238.30
Unsecured Loans to the Debtor	<u>68,599.78</u>
Total Principal Amount of Claim No. 55	\$ 88,307.69

Mr. Ellis explains that he arranged for P.F. Three Partners to make payments directly to the Debtor's contractors and suppliers as unsecured short-term loans to the Debtor. P.F. Three Partners has now provided sufficient evidence that P.F. Three Partners, or entities that have subsequently assigned their claims to P.F.

Three Partners, did in fact advance \$88,307.69 to or for the benefit of the debtor in possession.<sup>1</sup>

P.F. Three Partners has still failed, however, to establish that Claim No. 55 is entitled to administrative priority. As in the case of Claim Nos. 52 and 53, P.F. Three Partners has failed to offer new evidence that would support P.F. Three Partners' assertion that the Debtor incurred these debts in the ordinary course of business, and there is no dispute that the Debtor did not obtain court approval under section 364 for any of its post-petition borrowings.

An appropriate separate judgment will be entered.

DATED: Honolulu, Hawaii, June 15, 2004.

 */s/ Robert J. Faris*  
**United States Bankruptcy Judge**

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<sup>1</sup> The Trustee correctly points out that the invoices for some of the expenditures were addressed to the lenders, not the Debtor. Based on the supporting documentation, it appears that the expenses were incurred for the Debtor's benefit. Mr. Ellis credibly explains that he arranged matters in this fashion in order to assure contractors and suppliers of payment by an entity that was not in bankruptcy.